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No. 1124

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

ROBERT H. FLEMING,

Appellant,

vs.

REUBEN B. DAIGLE,

Appellee.

FILED
DEC 21 1904

TRANSCRIPT OF RECORD.

Upon Appeal from the United States District Court for the
District of Alaska, Third Division.



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United States Circuit Court of Appeals for the Ninth Circuit.

ROBERT H. FLEMING,

Appellant,

vs.

REUBEN B. DAIGLE,

Appellee.

Order Extending Return Day.

Now, on this 30th day of August, 1904, the above-entitled cause coming on to be heard before the Judge of the United States District Court in and for the District of Alaska, Third Division, at Fairbanks, Alaska, upon the petition of appellant, Robert H. Fleming, who appearing by his counsel, Messrs. Claypool, Stevens & Cowles, and the appellee having received notice of said motion, the said appellant requests an order extending the time within which to docket the said cause and to file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and shows that the same is necessary by reason of the great distance, slow and uncertain communication between said Fairbanks, Alaska, and the city of San Francisco, California; and the Court upon the hearing of said motion and being fully advised in the premises and considering that good cause has been shown for the granting of the same—

It is hereby ordered that the time within which the said appellant shall docket the said cause on appeal and the return day named in the citation issued by this Court be enlarged and extended to and including the 15th day of November, 1904.

JAMES WICKERSHAM,

Judge of the United States District Court in and for the
District of Alaska, Third Division.

Due service of the foregoing order and the receipt of a copy thereof is hereby admitted this 31st day of August, A. D. 1904.

J. C. KELLUM,

Attorney for Appellee.

Entered Aug. 31, 1904, in Journal 3, p. 283.

[Endorsed]: No. 1124. United States Circuit Court of Appeals for the Ninth Circuit. Robert H. Fleming vs. Reuben B. Daigle. Order Extending Time to Docket Cause. Filed Oct. 8, 1904. F. D. Monckton, Clerk.

The United States of America,

Third Division, District of Alaska, to wit:

At a District Court of the United States for the Third Division of the District of Alaska, begun and held at the courthouse in the town of Fairbanks, Alaska, on the second Monday of June, being the thirteenth day of the same month in the year of our Lord, one thousand nine hundred and four. Present: the Honorable JAMES WICKERSHAM, District Judge.

Among others were the following proceedings, to wit:

*In the United States District Court for the District of Alaska,
Third Division.*

ROBERT H. FLEMING,

Plaintiff,

vs.

REUBEN B. DAIGLE,

Defendant.

Complaint.

The plaintiff above named complains of the defendant, and for his cause of action alleges:

I.

That on the 16th day of June, 1903, the defendant was seised and possessed of certain real property, to wit: Hillside Claim No. Six (6), Below Discovery on Cleary Creek, in the above District and Division, containing twenty acres.

II.

That on the 16th day of June, 1903, the plaintiff and the defendant entered into an agreement in writing, dated on that day, by which the defendant agreed that he would, in consideration of the plaintiff sinking three holes to bedrock or one hole to bedrock and a drift of sixty feet, on the said premises duly convey to the plaintiff a divided one-half interest in and to the said mining claim, to wit, the upper half, in consideration whereof the plaintiff agreed to perform such work, the said agreement thereafter being duly filed for record and re-

corded in the office of the recorder at Fairbanks, Alaska, in volume III of Deeds, at page 55, which said agreement is in the words and figures following, viz.:

Fairbanks Dis., June 16, 1903.

Known to all persons by these presents that I, Reuben B. Daigle, do agree to transfer and deliver a Bill of Sale to R. H. Fleming for a divided $\frac{1}{2}$ one-half interest of Hillside Claim No. 6 Below Discovery on Cleary Creek, a tributary of Chat-Ne-Ka, namely the upper half for the consideration of the following Design work, on the lower line of above said claim, namely, that they will be 3 Holes sunk to bedrock or one hole to bedrock and a drift of 60 ft. this work is to be commenced on or before the first day of July, 1903, & completed on or before the first day of February, 1904.

REUBEN B. DAIGLE.

R. H. FLEMING.

(Signed) D. W. TRUITT.

III.

That the plaintiff duly performed all the conditions of the said agreement to be by him kept and performed previous to the time fixed in the said agreement for the performance thereof.

IV.

That subsequently to the performance by the plaintiff of the said work as by him agreed he demanded from the defendant a conveyance of said interest in said premises, and requested the said defendant specifically to perform his agreement to convey to the plaintiff said

one-half interest in said placer mining claim, but that defendant refused and ever since has refused and still refuses so to do.

V.

That long prior to the commencement of this action the defendant took possession of the said property and still occupies and withholds the same from plaintiff.

VI.

That the defendant has not executed a conveyance to the plaintiff.

Wherefore the plaintiff prays judgment against the defendant as follows:

1. That the agreement so made between the plaintiff and the defendant hereinbefore set out may be specifically performed, and that the defendant be required to convey said interest in said placer mining claim to the plaintiff, and to execute a good and sufficient deed therefor to him of said property.

2. For his costs and disbursements herein, including a reasonable attorney's fee, and for such other and further relief as may be deemed by the Honorable Court to be just and equitable.

By His Attorneys,

CLAYPOOL & COWLES.

District of Alaska, }
Fairbanks Precinct. } ss.

Robert H. Fleming, being by me first duly sworn, on his oath says: That he is the plaintiff in the foregoing

action, that he has read the complaint, knows the contents thereof, and that the same is true of his own knowledge.

ROBERT H. FLEMING.

Subscribed and sworn to before me this 25th day of April, 1904.

[Notarial Seal]

JAMES TOD COWLES,
Notary Public for Alaska.

Filed in the U. S. Court, District of Alaska, 3rd Division. Apr. 25, 1904. A. R. Heilig, Clerk. By John L. Long, Deputy.

*In the United States District Court for the District of Alaska,
Third Division.*

ROBERT H. FLEMING,

Plaintiff,

vs.

REUBEN B. DAIGLE,

Defendant.

} No. 156.

Answer.

Comes now the defendant in the above cause of action, and for his defense, admits, denies and alleges:

Admits all of the allegations contained in paragraphs one and two in the complaint in said action.

But denies that the plaintiff performed the conditions of the contract as set forth in paragraph two of said complaint.

Wherefore the defendant prays that the above action be dismissed and that he have judgment for his costs in this behalf expended.

J. C. KELLUM,
Attorney for Defendant.

United States of America, }
Alaska District. } ss.

Reuben B. Daigle, being first duly sworn, deposes and says: That he is the defendant in the above cause of action, that he has read the foregoing answer, and knows the contents thereof, and that the same is true.

REUBEN B. DAIGLE.

Subscribed and sworn to before me this 17th day of June, 1904.

[Notarial Seal]

J. C. KELLUM,
Notary Public.

I hereby accept service of copy of above answer.

CLAYPOOL & COWLES,
Attys. for Plaintiff.

Filed in the U. S. Court, District of Alaska, 3rd Division. Jun. 17, 1904. A. R. Heilig, Clerk. By ———, Deputy.

(Testimony of Robert H. Fleming.)

A. About 50 feet.

Q. And the second hole?

A. Some deeper; something like 60 feet.

Q. And the third hole?

A. I think about 70 feet; I didn't measure the holes, but as you went up the hill they were a little deeper.

Q. After having performed the work, as you had agreed to do with Fleming, what did you do, if anything, with reference to it?

A. Asked him to give me a half interest for performing the work.

Q. What did he do about that?

A. He didn't do anything; before that he told me that he would give me I think it would be about four hundred feet.

Q. Did he give you a half interest?

A. Never did.

Q. He refused to do so?

A. Yes, sir; he refused to do so.

Cross-examination.

(By Mr. KELLUM.)

Q. You staked a fraction off this claim, didn't you?

A. Yes, sir.

Q. About when? A. I think it was in July.

Q. About what time in July?

A. About the 20th, somewhere along there.

Q. And recorded it? A. Yes, sir.

(Testimony of Robert H. Fleming.)

Q. After you had made this contract?

A. Yes, sir.

Q. How many feet off from the corner stake did you claim up?

A. One hundred and forty feet up towards the center stake.

Q. And from the upper stake of your fraction to Daigle's center stake, how many feet is that?

A. I could not tell you that exactly.

Q. How did you go to see if there was a fraction there?

A. I stepped it; Mr. Hastings told me about it, that there was one between 5 creek and 5 side, and he told me there was a fraction there, and he says if you will stake 140 feet then you will have lots.

Q. If this plat here represents the claim, that is about your fraction, right in there, is it not?

A. If there is that much, I don't think there is any-ways near as much as that, because the claim is between 80 and 90 feet short, and I thought if there was any fraction I would stake enough.

Q. That was after you had made the contract with him?

A. After I made the contract and sunk the hole 36 or 37 feet.

Q. You claim to own that fraction?

A. I claim to own the fraction that was there; I think I ought to have it.

(Testimony of Robert H. Fleming.)

Q. Did you ever try to get Mr. Daigle to accept that hole as part of the work done on that contract?

A. I was in doubt as to whether it was on the fraction or on the claim, and he said it would not go, if was on the fraction.

Q. Did you try to get him to take it?

A. No, sir.

Q. Did you offer him that if he—Daigle—would accept this as one of the three holes that you were to put to bedrock that you would give him half of the fraction?

A. No, sir; he asked me if I would give him a half interest in it if he would accept the hole.

Q. And you refused to do it?

A. I refused to do it.

Q. On the 30th of November at Chena, or about the 1st or 2d of October, did Mr. Daigle notify you that he considered there was no work done yet on number six?

A. I think there was some talk of that kind.

Q. You admitted that there was not?

A. I did no such thing.

Q. Didn't he notify you that he would not accept that hole on the fraction?

A. Yes, sir, he notified me that he would not accept the hole on the fraction.

Q. Did he say anything to you at that time about sinking three holes on the claim instead of on the fraction?

A. He said the three holes had to be on the claim, certainly he did.

(Testimony of Robert H. Fleming.)

Q. Didn't you say, in the presence of Mr. Duncan, to Mr. Daigle, that you would give him half of the fraction if he would accept the hole?

A. No, sir, I didn't say that. Duncan is here, I guess so, you can get him.

Q. Do you know anything about Mr. Daigle asking the men that you had subcontracted to sink the hole, to sink it somewhere where it would be of advantage to him? A. I didn't hear anything of that kind.

Q. You are positive? A. Yes, sir.

Redirect Examination.

(By Mr. CLAYPOOL.)

Q. Can you indicate on this map where those holes are? A. That is a kind of hard matter.

(By the COURT.)

He can prepare a new plat and it can be introduced in evidence.

(By Mr. CLAYPOOL.)

Very well, we will do that.

JOSEPH RILEY, being duly sworn, testified as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. You may state your full name.

A. Joseph Riley.

Q. Do you know Mr. Fleming, the plaintiff in this case? A. Yes, sir.

(Testimony of Joseph Riley.)

Q. Do you know Mr. Daigle, the defendant?

A. I know Mr. Daigle to see him.

Q. Know him by sight? A. Yes, sir.

Q. Have you done any work on claim Number 6 Below, the bench of Cleary? A. Yes, sir.

Q. What work did you do there?

A. We finished sinking a hole to bedrock.

Q. Where was the hole—on what portion of the claim?

A. In the lower corner, near the lower line.

Q. How deep was it?

A. Somewhere in the neighborhood of 30 or 40 feet; I don't know exactly.

Q. You went to bedrock?

A. Went to bedrock; it was somewhere between 40 and 50 feet to bedrock.

Q. Is that the only hole you worked in?

A. Yes, sir.

Q. Do you know anything of the others?

A. I went down the others.

Q. Were they to bedrock?

A. Yes, sir; they were both to bedrock.

Q. They were both on the claim? A. Yes, sir.

(By the COURT.)

Is either of these holes now being testified to, one of the holes in controversy in the case this morning?

Mr. CLAYPOOL.—Oh, no.

(Testimony of Joseph Riley.)

Cross-examination.

(By Mr. KELLUM.)

Q. What do you say the depth of these holes was; numbering from the creek up towards the holes; how deep was the shaft of No. 1?

A. Somewhere between 40 feet and 50 feet; maybe 45 feet.

Q. Were you down to examine the bedrock?

A. I put them down myself.

Q. Number 2—how deep was that?

A. I don't just remember now; something like 50 feet; something over 50 feet.

Q. And Number 3?

A. Somewhere near 60 feet.

Q. You got through to bedrock?

A. I was at the bottom of all the holes; yes, sir.

Q. Number 1 hole—how deep was that when you commenced on it?

A. Somewhere between 30 and 40 feet.

Q. What time was it that you commenced?

A. Somewhere near the 15th of January; between the 10th and 15th; somewhere about that time; it was near the beginning of that cold snap, if you remember it.

Q. Do you know who had sunk the hole that far?

A. I don't know; I was told.

Q. How much deeper did you make it?

A. Somewhere in the neighborhood of 10 or 12 feet.

No redirect examination.

GILBERT McINTYRE, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. You may state your name.

A. Gilbert McIntyre.

Q. You are acquainted with the plaintiff, Mr. Fleming?

A. Yes, sir.

Q. And with the defendant, Mr. Daigle?

A. Slightly.

Q. Are you acquainted with the property known as Six Below Discovery on Cleary Creek, the bench?

A. The bench—yes, sir.

Q. Have you done any work on that property?

A. Yes, sir.

Q. At whose instance or request?

A. Mr. Fleming's.

Q. What did you do?

A. I helped sink three holes to bedrock.

Q. When was that?

A. I commenced work on the 12th day of December, and finished on the 28th day of January.

Cross-examination.

(By Mr. KELLUM.)

Q. Did you reach bedrock? A. Yes, sir.

Q. On how many holes? A. Three holes.

Q. All three holes you put to bedrock?

A. Yes, sir.

Q. Who helped you?

(Testimony of Gilbert McIntyre.)

A. Mr. Richardson, Mr. Dunn, and Mr. Riley.

Q. You are familiar with bedrock on Cleary?

A. Slightly.

Q. And you positively say that these holes were down to bedrock? A. Yes, sir.

ROBERT DUNN, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name? A. Robert Dunn.

Q. What is your business? A. Mining.

Q. Are you acquainted with the plaintiff, Mr. Fleming? A. Yes, sir.

Q. Do you know the property described as Number 6 Below on Cleary Creek, bench claim?

A. Yes, sir.

Q. Have you done any work there?

A. Yes, sir.

Q. When? A. Last winter; January, I guess.

Q. What did you do?

A. I helped sink two holes.

Q. How far down did you go with them?

A. About 60 feet; near that.

Q. Did you or did you not go to bedrock with the two holes? A. We went to bedrock.

(Testimony of Robert Dunn.)

Cross-examination.

(By Mr. KELLUM.)

Q. In how many holes did you go to bedrock?

A. Two holes, sir.

Q. Which of the holes were they with reference to the corner stake?

A. Two and three, next to the creek.

Q. How deep were they?

A. In the neighborhood, I think, of about 60 feet.

Q. You are familiar with bedrock?

A. Yes, sir.

Q. You know when you strike bedrock?

A. Yes, sir.

Q. You are sure these holes were to bedrock?

A. Yes, sir.

Q. Did you do any work at all in hole Number 1?

A. No, sir.

Q. That is, the first hole from the corner?

A. No, sir.

Redirect Examination.

(By Mr. CLAYPOOL.)

Q. Did you examine Number 1 hole at all?

A. I examined the bedrock on the surface.

Q. Then there was bedrock brought up?

A. Yes, sir.

(By the COURT.)

Gentlemen, I want to ask a question in this matter;

(Testimony of Robert Dunn.)

does Mr. Fleming claim a fraction off this claim in controversy?

Mr. FLEMING.—Yes, sir; I claim a small fraction.

Mr. CLAYPOOL.—On the side, but none of these holes are on that.

Mr. KELLUM.—Oh, I beg your pardon; they are; that is Mr. Fleming's evidence.

The COURT.—Mr. Fleming may take the stand to explain this.

(Mr. Fleming takes the witness-stand.)

Mr. FLEMING.—I don't claim that the hole is on the fraction; I claim it is on Mr. Daigle's ground.

Mr. CLAYPOOL.—You claim none of the ground on which the hole is sunk?

Mr. FLEMING.—No, sir, it is inside his stakes 60 or 80 feet.

The COURT.—It is within the limits; inside of his stakes 60 or 80 feet; is it inside the distance that you claim, inside on your location notice?

Mr. FLEMING.—I found I had located the fraction too large.

The COURT.—Did you move your stakes?

Mr. FLEMING.—No, sir.

The COURT.—They are where they were originally set?

Mr. FLEMING.—Yes, sir; they are.

(Testimony of Robert Dunn.)

The COURT.—And do not include the hole in question?

Mr. FLEMING.—It covers that hole.

The COURT.—One of those three holes that you claim to have done for him?

Mr. FLEMING.—Yes, sir, on the fraction; it is on his ground.

Mr. CLAYPOOL.—Do you or do you not claim any of the ground on which these three holes are situated?

Mr. FLEMING.—No, sir, I don't; no, I don't; it is on Daigle's ground.

The COURT.—What I ask you is this: Is that hole within your stakes?

Mr. FLEMING.—Yes, the stakes I put down when I staked the fraction.

The COURT.—When did he relinquish it?

Mr. CLAYPOOL.—He will do that now.

The COURT.—Well, it is a question whether he can at this time. Go ahead, gentlemen.

(By Mr. KELLUM.)

Q. Did you ever have any conversation with Mr. Daigle about coming to a conclusion or understanding as to where his corner stake was, measuring from his center stake down?

A. I don't know where his center stake is; I know

(Testimony of Robert Dunn.)

where his lower corner is; there is only one stake on the ground that I can read the notice on.

Q. That stake has usually been considered as the center stake on the dividing line between 6 and 7; have you ever measured or anyone else, 330 feet from there?

A. Yes, sir.

Q. Has not that been considered as the corner stake of Daigle's claim?

A. No, it is now, but it was not when I went on the ground.

Q. Was it not at that time you had this conversation?

A. No, sir, it was not marked at that time.

(By the COURT.)

Q. In the other case this forenoon, it appeared that the plaintiff there had staked a fraction, but in that case he had abandoned the fraction and the contract was made in writing afterward; now, I want to know when this contract was made with regard to the staking of this fraction.

A. The contract was made long before.

(By Mr. KELLUM.)

Q. Measuring down here on this plat: the surveyor has called this your fraction down here, 117 feet, which includes one shaft—

A. I would like to ask the distance of the claim.

Q. Twelve hundred and twenty-three feet. These are your stakes here?

A. I would not say exactly.

(Testimony of Robert Dunn.)

(By the COURT.)

Q. When did you stake this fraction?

A. In the latter part of July last year, I think.

Q. When did you put this hole down on this fraction?

A. I was down 36 or 37 feet before I knew there was any ground vacant there, any excess.

Q. Did you make any other discovery on that fraction except that hole?

A. No, I didn't; never did.

Q. Did you make a discovery in that hole. in that shaft? A. There was gold there; yes, sir.

JOHN ANDERSON, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name? A. John Anderson.

Q. Do you know the plaintiff, Mr. Fleming?

A. Yes, sir.

Q. Do you know the property described at 6 Below, the bench on Cleary? A. Yes, sir.

Q. Do you know anything about the work that has been done there?

A. I was there when the work was done.

Q. What work has been done?

A. Three holes sunk to bedrock.

Q. By whom?

(Testimony of John Anderson.)

A. By Mr. Fleming; well, not by him, but by his agents.

Q. His agents and employees? A. Yes, sir.

Cross-examination.

(By Mr. KELLUM.)

Q. All those holes were put to bedrock?

A. Yes, sir.

GEORGE W. RICHARDSON, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name?

A. George W. Richardson.

Q. Are you acquainted with the claim in controversy?

A. I am.

Q. Do you know what work has been done there?

A. Yes, sir, three holes sunk to bedrock.

Q. By whom?

A. By Mr. Fleming and his agents, the parties working for him; I helped to sink one hole.

Cross-examination.

(By Mr. KELLUM.)

Q. Have you any interest in the claim, Mr. Richardson? A. I am supposed to get an interest.

Q. They are to bedrock? A. Yes, sir.

Q. All the three? A. Yes, sir.

SAMUEL WISE, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. State your full name.

A. Samuel Wise.

Q. Mr. Wise, are you acquainted with the property known as Number 6 below, the bench on Cleary?

A. Yes, I know where it is located.

Q. Are you acquainted with Mr. Fleming, the plaintiff in this case?

A. Yes, sir.

Q. Do you know what work has been done up there?

A. Yes, sir.

Q. Have you made any examination of it?

A. Yes, sir.

Q. Are you interested in this case in any way?

A. None whatever, not in any way.

Q. You may state what examination you did make.

A. I was down in two shafts and examined the bedrock.

Q. With reference to the corner, which two shafts?

A. The first and second shaft from the creek, I think.

Q. How deep are those holes?

A. I couldn't say exactly, 50 or 60 feet.

Q. Was there bedrock there?

A. Yes, sir.

REUBEN B. DAIGLE, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. KELLUM.)

Q. You are the defendant in this cause?

A. Yes, sir.

Q. Does this map represent the claim Number 6, the one that you have sold?

A. Yes, sir, I understand this to be it.

Q. Did you ever have any conversation with Mr. Fleming about a fraction he had located and recorded prior to that—well, at any time along in the fall?

A. Yes, sir.

Q. You may state what the conversation was.

A. It was in September; it was somewheres near the last of September; I came over from Fairbanks and went down Chatham; I met Mr. Fleming and asked him if he had anyone there on the ground working it, as I understood him some time in August that he had abandoned this hole on the fraction and claimed it, and so I was anxious to have the work carried on so I could go to work in the winter; I wanted to see if I could get him to do the work; although he had his time till February; and he said that he had sunk this hole on the fraction and wanted me to accept that as one of the three holes, and I told him that I would not, and he said, "If you will accept that hole I will give you a divided half-interest in the fraction, provided there is no gold in it, for you to dump your tailings on; that was

(Testimony of Reuben B. Daigle.)

in the presence of John Duncan; then the 2d day of October down at Chena, he was down there and we was speaking about this fraction hole question and he wanted me to accept it again and was making insinuations that there would be work done—

Q. Well, never mind that; state what he said!

A. He said I would have the advantage of seven holes instead of six; because the men on 7 was going to sink some holes, and I told him I wanted three holes on 6, and I told him I wouldn't accept this hole on the fraction.

Q. You recognized that as his hole?

A. I certainly did, that it was his, he staked and recorded, and claimed it himself; I understood that he hadn't a hole to bedrock, and if there was no gold in the fraction he would give me a half interest.

Q. Was this said in the presence of anybody else?

A. At Chena just Walter Knott; I told him I would not accept this hole on the fraction and I wanted him to go ahead and sink three holes on the claim as he had contracted to do, and that was all; we was talking and chewing the rag and he said if he had sunk three holes I would really have the advantage of seven holes and I told him I didn't care about that; if he had sunk three holes he might go up.

Q. You only claimed down to that stake?

A. Thirty-three feet from the center stake is all I ever claimed.

(Testimony of Reuben B. Daigle.)

Cross-examination.

(By Mr. CLAYPOOL.)

Q. Does not your notice read that you claimed 20 acres? A. No, sir.

Q. Do you remember how it does read?

A. It has been two and a half years since I staked it; I could not very well give a correct statement.

Q. Well, what is your recollection of what you claimed; what your measurements are?

A. My recollections are 1320 down stream and 330 on each side of this center stake.

(By Mr. KELLUM.)

Q. You own that claim at the present time?

A. No, sir.

(By Mr. CLAYPOOL.)

Q. Is this hole that you speak about now within your stakes? A. What hole?

Q. Are not they all inside your original stakes?

A. I presume they are, probably.

Q. Are they or are they not?

A. The stakes is out here; the original stakes is shown here on the map.

Q. The holes are all inside those?

A. They appear to be, yes, sir.

Q. Do you know how much ground was included in the ground embraced in your original stakes?

A. I don't.

(Testimony of Reuben B. Daigle.)

Q. What does it show from that map, fraction and all?
A. You can look at it yourself.

Mr. CLAYPOOL.—Eighteen and five-tenths and three and eighteen one-hundredths; over 21 acres, is it not?

Mr. KELLUM.—I will ask that the Commissioner bring in the recorded notice of Mr. Fleming's claim.

Mr. CLAYPOOL.—It is admitted.

The COURT.—It may be read into the record.

(Mr. Kellum reads:) "July 14, 1903, Number 6 Below Cleary Creek, I claim 1320 feet down stream and 140 feet wide off Number 6 hillside and adjoining Number 6 Creek Claim. R. H. Fleming. Filed for record July 24, 1903, at 10:30 A. M. Chas. Ethelbert Claypool, Commissioner and ex-officio Recorder, by J. T. Cowles, Deputy."

The COURT.—Where is it recorded, Mr. Kellum?

Mr. KELLUM.—In volume 3 of Locations, page 233.

The COURT.—In what precinct?

Mr. KELLUM.—From the record in the office of the Fairbanks Recording District, District of Alaska.

J. H. JOSLIN, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. KELLUM.)

Q. Did you make this map from notes you made at the time?
A. Yes, sir.

(Testimony of J. H. Joslin.)

Q. You may state whether this is an accurate survey of this claim. A. Yes, sir.

Q. What is the distance from the lower corner stake to the corner stake as admitted?

A. I make it 117 feet.

(By the COURT.)

Q. How far is that point that you make 117 feet from the center line of the claim?

A. I measured 330 feet and established a corner and then 117 feet on down to what appeared to be the old original stake—what I took to be and what was pointed out to me as the original stake of the claim; instead of staking 330 he staked 330 plus 117.

Q. Is that the stake of the fraction up there?

A. Yes, sir.

Q. Whose stake is that?

A. Well, I don't remember that, as to whose stake it is; it is a fraction stake there, but the marks are generally illegible and I didn't make any memorandum as to that; it was the fraction stake pointed out to me; there is a line blazed and cut through there; and this was pointed out as being the fraction stake.

Q. How many acres are there in the fraction?

A. Approximately three and eighteen-hundredths.

(By Mr. KELLUM.)

Q. The lower corner stake on the line—was that established by Fleming or Daigle? I mean this line here.

A. I established a corner there.

(Testimony of J. H. Joslin.)

Q. It was also established before?

A. There is a corner established here by someone, over near this; I didn't establish it in my line; it was out of the line with my line.

Q. And that fraction that you measured, out here, contains that shaft, does it not? A. Yes, sir.

Cross-examination.

(By Mr. CLAYPOOL.)

Q. What is the acreage comprised within the original stake, the fraction included?

A. Something over 20 acres, 21 and a fraction.

*In the United States District Court for the District of
Alaska, Third Division.*

R. H. FLEMING,

Plaintiff,

vs.

REUBEN B. DAIGLE,

Defendant.

Motion.

Now on this 25th day of July, 1904, at 10:00 o'clock A. M., comes the plaintiff by his attorneys and moves the Court to be allowed to recall defendant's witness, J. H. Joslin, and offers to show by said J. H. Joslin on cross-examination the identification of a certain plat concerning which the said Joslin testified at the hearing hereof, purporting to be a plat made from actual survey

of the claim in controversy herein, and to show further by said witness on cross-examination the distance from the original lower corner stake to the hole referred to in the testimony and known as Shaft No. 1, sunk by plaintiff. Or in other words, to show the distance from said hole to the lower stake of defendant as established by him upon his restaking said claim.

Said plaintiff further states that the object of said testimony is to show that said Shaft No. 1 is within the twenty acre limit of said claim.

Plaintiff further moves the court that he be allowed to introduce in evidence pages 519, 520 and 521 of vol. 1 of the Record of Deeds of the Fairbanks Recording District, District of Alaska, for the purpose of proving that defendant at the time of the commencement of this action claimed to own and possess the property in controversy herein.

And the defendant appearing by his counsel J. C. Kellum, in pursuance of notice heretofore given and the Court hearing argument of counsel herein and being advised in the premises, overruled said motion upon the grounds that the evidence tendered and each and every part thereof is immaterial to the issues in this cause. To which ruling plaintiff then and there excepted which exceptions were allowed by the Court.

JAMES WICKERSHAM,

Judge.

*In the United States District Court for the District of
Alaska, Third Division.*

ROBERT H. FLEMING,

Plaintiff,

vs.

REUBEN B. DAIGLE,

Defendant.

Order Settling Bill of Exceptions.

Now on this 30th day of August, 1904, comes the plaintiff, Robert H. Fleming, by his attorneys, Messrs. Claypool, Stevens and Cowles, and the defendant by his attorney, J. C. Kellum, Esq., also comes, and the said plaintiff presents his statement of facts and bill of exceptions for settlement herein on his appeal to the United States Circuit Court of Appeals for the Ninth Circuit, which bill of exceptions consists of the foregoing type-written pages of the proceedings and testimony of witnesses given by the respective parties at the trial of said cause in this court as well as the exhibits and bill of exceptions, motions and orders of court, all hereto attached. And there being no objections thereto upon the part of the said defendant, and no amendments proposed thereto, and the same being all of the evidence, orders, motions, and proceedings in said cause not of record, and the same being correct and true; and inasmuch as the same does not appear of record in said action, and is hereby approved, allowed and settled, the same and the whole thereof is hereby made a part of the record herein.

Done within the time allowed and by the Judge who tried said cause.

JAMES WICKERSHAM,
Judge of Said Court.

O. K.—J. C. KELLUM.

*In the United States District Court for the District of
Alaska, Third Division*

ROBERT H. FLEMING,	} Plaintiff,	No. 156.
vs.		
REUBEN B. DAIGLE,		

Findings of Fact and Conclusions of Law Proposed by Plaintiff.

The plaintiff above-named requests the Court to find herein the following facts and conclusions of law, and makes each request separately:

First.

That on the 16th day of June, 1903, the defendant was the owner of and possessed of that certain placer mining claim known as the Hillside Claim, Number Six (6) Below Discovery on Cleary Creek, in the Fairbanks Mining District, District of Alaska, and containing twenty (20) acres.

Second.

That at the time of the commencement of this suit the defendant owned and possessed that certain placer mining claim situate in the Fairbanks Mining District, Dis-

tract of Alaska, known as the Hillside Claim, Number Six (6) Belw Discovery on Cleary Creek, in said Fairbanks Mining District, District of Alaska.

Third.

That on the 16th day of June, 1903, the plaintiff and the defendant entered into an agreement in writing wherein defendant agreed to convey to plaintiff the upper one-half ($\frac{1}{2}$) of Hillside Claim Number Six (6) Below Discovery on Cleary Creek in the Fairbanks Mining District, District of Alaska, in consideration of which plaintiff had the option of sinking three (3) holes to bedrock on said claim, or sinking one (1) hole to bedrock and running a drift of sixty feet (60); that said work should be commenced on or before July 1st, 1903; and completed on or before February 1st, 1904.

Fourth.

That plaintiff, on or before July 1st, 1903, entered upon the claim in controversy and partially sunk one hole within the boundaries of said claim, as heretofore staked by defendant; that afterward and on or about the —— day of July, 1903, plaintiff staked the lower one hundred and seventeen (117) feet of said claim as a fraction, which fractional location as staked included the first hole sunk by plaintiff.

Fifth.

That afterward, and on or about the 2d day of October, 1903, defendant requested plaintiff to complete the sinking of the three (3) holes required by his said contract, which was by plaintiff complied with by there-

after, and upon the first day of January, 1904, completed by sinking first hole to bedrock and by sinking second hole to bedrock upon defendant's claim.

Sixth.

That the first hole sunk by plaintiff is, as a matter of fact, on the claim of defendant and within the limits of twenty acres (20), which was claimed by the defendant in his location of said claim.

Seventh.

That plaintiff, on or before the completion of the three holes provided for in said contract abandoned all claims under his fractional location, to any part of the (20) twenty acres contained in defendant's location.

Eighth.

That defendant after the completion of the sinking of the three holes by plaintiff, under his contract, caused his said claim to be surveyed and reduced the limits of said claim from twenty-one (21) acres, as originally staked, to eighteen and a half ($18\frac{1}{2}$) acres, and established the limits of such reduced claim by excluding therefrom the first shaft sunk by the plaintiff.

Ninth.

That plaintiff never claimed any portion of defendant's original location, excepting as to the excess of twenty (20) acres.

Tenth.

That prior to the commencement of this suit plaintiff

demanded of defendant a conveyance of the upper one-half ($\frac{1}{2}$) of said claim.

_____,
Judge.

THE CONCLUSIONS OF LAW.

Plaintiff requests the following conclusions of law:

First.

That plaintiff performed all of the conditions of his agreement with defendant to be performed under its terms.

Second.

That defendant refused to convey the upper one-half ($\frac{1}{2}$) of said claim Number Six (6) upon request of plaintiff, but fraudulently reduced the limits of his claim for the purpose of defeating the rights of plaintiff.

Third.

That plaintiff is entitled to prevail herein and to a decree of this Court decreeing the specific performance of the above-mentioned contract, and to a conveyance of the upper one-half ($\frac{1}{2}$) of the claim in controversy.

_____,
Judge.

Filed in the U. S. Court, District of Alaska, 3d Division. July 26, 1904. A. R. Heilig, Clerk. By _____, Deputy.

*United States District Court, Third Division, District of
Alaska.*

FLEMING }
 vs. } No. 156.
 DAIGLE. }

Refusal of Court to Sign Findings Presented by Plaintiff

And now, to wit, July 26, 1904, comes the plaintiff and presents to the Court findings of fact and conclusions of law which he requests the Court to make and sign; and the Court having duly considered the same, refuses to make and sign such findings and conclusions; to which plaintiff excepts and an exception is allowed.

Entered July 26, 1904, in Journal 3, page 194.

*In the United States District Court, Third Division, Dis-
trict of Alaska.*

ROBERT H. FLEMING, }
 Plaintiff, }
 vs. } No. 156.
 REUBEN B. DAIGLE, }
 Defendant. }

Findings of Fact and Conclusions of Law.

This cause having been called regularly for trial before the Court, Messrs. Claypool and Cowles, appeared as attorneys for plaintiff, and Mr. J. C. Kellum, appeared as attorney for defendant. And the Court having heard the proofs of the respective parties, and considered the

same, and the records and papers in the cause, and the argument of the respective attorneys therein, and the cause having been submitted to the Court for its decision, the Court now finds the following facts:

I. That the plaintiff and the defendant entered into a written agreement whereby the plaintiff was to perform certain work, to wit, sink three holes to bedrock on Bench Placer Mining Claim, Number Six, Below Discovery on Cleary Creek, right limit, in the Fairbanks Mining and Recording District, Alaska District, and when said three holes were sunk to bedrock, then the defendant was to make, execute and deliver to the plaintiff a good and sufficient deed to one-half interest in and to said mining claim.

II. That the said plaintiff did not sink three holes to bedrock on said bench placer mining claim, as he had agreed to do.

As conclusions of law from the foregoing facts, the Court now hereby finds and decides:

I. That the plaintiff is entitled to no part of said claim, under or by virtue of said agreement.

That the defendant is entitled to a judgment for costs to be taxed against said plaintiff.

And judgment is hereby ordered to be entered against plaintiff accordingly.

JAMES WICKERSHAM,

Judge.

Filed in the U. S. Court, District of Alaska, 3d Division. July 26, 1904. A. R. Heilig, Clerk. By _____, Deputy.

In the United States District Court, Third Division, District of Alaska.

ROBERT H. FLEMING,

Plaintiff,

vs.

REUBEN B. DAIGLE,

Defendant.

Judgment.

This cause coming on regularly for trial on the 22d day of July, 1904, Messrs. Claypool and Cowles, appearing as counsel for plaintiff, and Mr. J. C. Kellum for the defendant. The cause was tried before the Court without a jury, whereupon witnesses upon the part of the plaintiff and defendant were duly sworn and examined, and documentary evidence introduced by respective parties, and the evidence being closed, the cause was submitted to the Court for consideration and decision; and after due deliberation thereon, the Court finds its findings and decision in writing, and orders that judgment be entered herein in favor of the defendant in accordance therewith.

Wherefore by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed that the plaintiff, Robert H. Fleming, take nothing by his said action, and that he has no right, title or interest in and to the said claim in dispute, or any part thereof, to wit, Bench Placer Mining Claim Number Six, on the Right Limit, below Discovery, on Cleary Creek, in the Fairbanks Mining and Recording District, Alaska District, and that

the defendant do have and recover of and from the said plaintiff his costs and disbursements incurred in this action, amounting to the sum of \$———.

Judgment rendered July 26, 1904.

JAMES WICKERSHAM,
Judge.

Entered July 26, 1904, in Journal 3, p. 191.

*In the United States District Court for the District of
Alaska, Third Division*

ROBERT H. FLEMING,

Plaintiff,

vs.

REUBEN B. DAIGLE,

Defendant.

Assignment of Errors.

Comes now the plaintiff, Robert H. Fleming, and files herein the following assignment of errors upon which he relies:

I.

The Court erred in refusing to find as requested by plaintiff in plaintiff's proposed findings of fact:

"That on the 16th day of June, 1903, the defendant was the owner of and possessed of that certain placer mining claim known as the Hillside Claim Number Six Below Discovery on Cleary Creek, in the Fairbanks Mining District, District of Alaska, and containing twenty acres."

II.

That the Court erred in refusing to find as requested by plaintiff in paragraph II of plaintiff's proposed findings of fact, as follows:

"That at the time of the commencement of this suit the defendant owned and possessed that certain placer mining claim situate in the Fairbanks Mining District, District of Alaska, known as the Hillside Claim Number Six Below Discovery on Cleary Creek in said Fairbanks Mining District, District of Alaska."

III.

That the Court erred in refusing to find as requested by plaintiff in his proposed findings of fact, as follows:

"That on the 16th day of June, 1903, the plaintiff and defendant entered into an agreement in writing, wherein defendant agreed to convey to plaintiff the upper one-half of Hillside Claim Number Six Below Discovery on Cleary Creek in the Fairbanks Mining District, District of Alaska, in consideration of which plaintiff had the option of sinking three holes to bedrock on said claim, or sinking one hole to bedrock and running a drift of sixty feet; that said work should be commenced on or before July 1, 1903; and completed on or before February 1, 1904."

IV.

That the Court erred in refusing to find as requested by plaintiff as set forth in paragraph IV of plaintiff's proposed findings in said cause, as follows:

"That plaintiff, on or before July 1, 1903, entered upon the claim in controversy and partially sunk one hole

within the boundaries of said claim, as heretofore staked by defendant; that afterward and on or about the —— day of July, 1903, plaintiff staked the lower one hundred and seventeen feet of said claim as a fraction, which fractional location as staked completed the first hole sunk by plaintiff.”

V.

That the Court erred in refusing to find as requested by plaintiff in paragraph 5th of his proposed findings of fact, as follows:

“That afterwards and on or about the 2d day of October, 1903, defendant requested plaintiff to complete the sinking of the three holes required by his said contract, which was by plaintiff complied with by thereafter, and upon the 1st day of January, 1904, completed by sinking the first hole to bedrock and by sinking the second hole to bedrock upon defendant’s claim.”

VI.

That the Court erred in refusing to find as requested by plaintiff in paragraph VI of plaintiff’s proposed findings of fact, as follows:

“That on the first hole sunk by plaintiff is, as a matter of fact, on the claim of defendant, and within the limits of twenty acres which was claimed by the defendant in his location of said claim.”

VII.

That the Court erred in refusing to find, as requested by plaintiff, in the 7th paragraph of plaintiff’s proposed findings of fact, as follows:

“That plaintiff, on or before the completion of the three holes provided for in said contract, abandoned all claims under his fractional location to any part of the twenty acres contained in defendant’s location.”

VIII.

That the Court erred in refusing to find as requested by plaintiff in the 8th paragraph of plaintiff’s proposed findings of fact, as follows:

“That defendant after the completion of the sinking of the three holes by plaintiff, under his contract, caused his said claim to be surveyed, and reduced the limits of said claim from twenty-one acres as originally staked, to eighteen and one-half acres, and established the limits of such reduced claim by excluding therefrom the first shaft sunk by the plaintiff.”

IX.

The Court erred in refusing to find as requested by plaintiff in paragraph 9th of plaintiff’s proposed findings of fact as follows:

“That plaintiff never claimed any portion of defendant’s original location, excepting as to the excess of twenty acres.”

X.

That the Court erred in refusing to find as requested by plaintiff in the 10th paragraph of plaintiff’s proposed findings of fact, as follows:

“That prior to the commencement of this suit plaintiff demanded of defendant a conveyance of the upper one-half of said claim.”

XI.

That the Court erred in refusing to find as a conclusion of law and as requested in the first paragraph of plaintiff's proposed conclusions of law,

"That plaintiff performed all of the conditions of his agreement with defendant to be performed under its terms."

XII.

That the Court erred in refusing to find as requested by plaintiff in plaintiff's second paragraph of his proposed conclusions of law, as follows:

"That defendant in refusing to convey the upper one-half of said claim Number Six upon request of plaintiff, fraudulently reduced the limits of his claim for the purpose of defeating the rights of plaintiff."

XIII.

That the Court erred in refusing to find as a conclusion of law as requested by plaintiff in paragraph 3d of plaintiff's proposed conclusions of law:

"That plaintiff is entitled to prevail herein, and to a decree of this Court decreeing the specific performance of the above-mentioned contract, and to a conveyance of the upper one-half of the claim in controversy."

XIV.

That the Court erred in refusing to enter a decree and judgment as requested by plaintiff in accordance with plaintiff's proposed findings of fact and conclusions of law.

XV.

That the Court erred in its finding of facts as set forth in paragraph I of the finding of facts signed by said court.

XVI.

That the Court erred in its findings of fact as set forth in paragraph II of said findings of fact.

XVII.

That the Court erred in its findings of fact as set forth in paragraph III of the findings of fact herein.

XVIII.

That the Court erred in its findings of fact as set forth in paragraph IV of said findings of fact.

XIX.

That the Court erred in its conclusion of law as set forth in paragraph I of its conclusions of law.

XX.

That the Court erred in its conclusions of law as set forth in paragraph II of the conclusions of law herein.

XXI.

That the Court erred in refusing to grant plaintiff's motion filed in said cause before any findings of fact or conclusions of law were made by said Court, which motion is as follows, to wit:

"Now, on this 25th day of July, 1904, at 10:00 o'clock A. M., comes the plaintiff by his attorneys and moves the Court to be allowed to recall defendant's witness, J. H. Joslin, and offers to show by said J. H. Joslin on

cross-examination the identification of a certain plat, concerning which the said Joslin testified at the hearing hereof, purporting to be a plat made from actual survey of the claim in controversy herein, and to show further by said witness on cross-examination the distance from the original lower corner stake to the hole referred to in the testimony, and known as shaft Number One, sunk by plaintiff. Or, in other words, to show the distance from said hole to the lower stake of defendant as established by him upon his restaking said claim.

Said plaintiff further states that the object of said testimony is to show that said shaft Number One is within the twenty acre limit of said claim.

Plaintiff further moves the Court that he be allowed to introduce in evidence Pages 519, 520 and 521 of volume one of the record of deeds of the Fairbanks Recording District, District of Alaska, for the purpose of proving that defendant at the time of the commencement of this action claimed to own and possess the property in controversy herein.

And the defendant appearing by his counsel, J. C. Kellum, in pursuance of notice heretofore given, and the Court hearing argument of counsel herein, and being advised in the premises, overruled said motion upon the grounds that the evidence tendered and each and every part thereof is immaterial to the issues in this cause, to which ruling plaintiff then and there excepted, which exceptions were allowed by the Court.

JAMES WICKERSHAM,

Judge."

XXII.

That the Court erred in entering judgment herein for the reason that the same is contrary to the evidence adduced in said cause and is against the law.

CLAYPOOL, STEVENS & COWLES,
Attorneys for Plaintiff.

Filed in the U. S. Court, District of Alaska, 3rd Division. Aug. 31, 1904. A. R. Heilig, Clerk. By _____, Deputy.

*In the United States District Court, District of Alaska,
Third Division.*

ROBERT H. FLEMING,
Plaintiff,

vs.

REUBEN B. DAIGLE,
Defendant.

Bond on Appeal.

Know all men by these presents, that we, Robert H. Fleming, of the town of Fairbanks, District of Alaska, as principal, and F. G. Manley and Geo. Roth, as sureties, are held and firmly bound unto Reuben B. Daigle in the full and just sum of one thousand dollars, to be paid to the said Reuben B. Daigle, his attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by the presents.

Sealed with our seals and dated this twenty-seventh day of July, A. D. 1904.

Whereas, lately at a term of the United States District Court for the District of Alaska, Third Division, in a suit pending in said court between the said Robert H. Fleming as plaintiff and the said Ruben B. Daigle as the defendant, wherein the said plaintiff sued for the specific performance of a contract providing for the conveyance of the upper half of hill side claim Number Six, Below Discovery on Cleary Creek in the Fairbanks Mining District, District of Alaska from the defendant, a decree was rendered against the said plaintiff in said action, and the said Robert H. Fleming is about to obtain from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the said final decree and judgment of the aforesaid suit, and a citation directed to said Reuben B. Daigle is about to be issued citing and admonishing him to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California.

Now, the condition of the above obligation is such that if the said Robert H. Fleming shall prosecute his said appeal to effect, and shall answer all damages and costs that may be awarded against him, if he fail to make his plea good and shall in all respects abide and

perform the orders and judgment of the appellate court upon his said appeal, then the above obligation is to be void; otherwise to remain in full force and virtue.

ROBERT H. FLEMING. [L. S]

F. G. MANLEY. [L. S.]

GEO. ROTH. [L. S.]

United States of America, }
District of Alaska. } ss.

F. G. Manley and Geo. Roth, the persons named in and who subscribed the above and foregoing undertaking as the sureties thereto, being each severally and duly sworn, each for himself says, that he is a resident within the District of Alaska, that he is not a counselor or attorney at law, marshal, clerk of any court, or other officer of any court.

That he is worth the sum specified in the foregoing undertaking, to wit: The sum of one thousand dollars, exclusive of property exempt from execution and over and above all just debts and liabilities.

F. G. MANLEY.

GEO. ROTH.

Subscribed and sworn to before me this twenty-seventh day of July, A. D. 1904.

[Seal] MORTON E. STEVENS,

Notary Public in and for the District of Alaska.

Sufficiency of sureties on the foregoing bond approved this 30th day of Aug. 1904.

JAMES WICKERSHAM,

Judge of Said Court.

Filed in the U. S. Court, District of Alaska, 3rd Division. Aug. 31, 1904. A. R. Heilig, Clerk. By ———, Deputy.

*In the United States District Court for the District of Alaska,
Third Division.*

ROBERT H. FLEMING,

Plaintiff,

vs.

REUBEN B. DAIGLE,

Defendant.

Order Allowing Appeal.

Now, on this 30th day of Aug. 1904, the same being one of the regular judicial days of the special term of this Court held at Fairbanks, District of Alaska, Third Division, this cause coming on to be heard upon the plaintiff's petition herein for an appeal, and the plaintiff appearing by his counsel, Messrs. Claypool, Stevens & Cowles, and the defendant appearing by his counsel, J. C. Kellum, Esq., and the Court being advised in the premises—

It is ordered that plaintiff's appeal in said cause to the United States Circuit Court of Appeals for the Ninth

Circuit, be, and the same is hereby allowed; and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein, be transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the return day of said appeal and citation be fixed at thirty days from the date hereof, and that plaintiff shall have twenty days from this date within which to prepare and file his statement of facts and bill of exceptions herein.

It is further ordered that the bond on appeal of the said plaintiff be fixed at the sum of \$1,000.00, the same when given and approved to act as a supersedeas bond as well as a bond for costs and damages on appeal.

JAMES WICKERSHAM,

Judge.

Entered Aug. 31, 1904, in Journal 3, p. 283.

*In the United States District Court for the District of
Alaska, Third Division.*

ROBERT H. FLEMING,

Plaintiff,

vs.

REUBEN B. DAIGLE,

Defendant.

Citation.

United States of America, }
District of Alaska. } ss.

The President of the United States, to Reuben B. Daigle,
Esq., the Above-named Defendant, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal, made and entered in the above-entitled cause, in which Robert H. Fleming is plaintiff and appellant and said Reuben B. Daigle is defendant and appellee, to show cause, if any there be, why the decree and judgment rendered in said cause against the said plaintiff, should not be set aside, corrected and reversed, and why speedy justice should not be done to the said Robert H. Fleming in that behalf.

*United States District Court, Third Division, District of
Alaska.*

ROBERT H. FLEMING,

Plaintiff,

vs.

No. 156.

REUBEN B. DAIGLE,

Defendant.

Clerk's Certificate to Transcript.

I, Albert R. Heilig, Clerk of the United States District Court for the Third Division of the District of Alaska, hereby certify the foregoing forty-four type-written pages, numbered from 1 to 44, inclusive, to be a full, true and correct copy of the record, bill of exceptions, assignment of errors and all proceedings in the above and therein entitled cause, as the same remains of record and on file in the office of the clerk of said court, and that the same is in full compliance with the order of said Court allowing an appeal of said cause. That pages 45 and 46 constitute the original citation, and acceptance of service.

I further certify that the cost of the foregoing record on appeal is \$18.00, and that said amount was paid by the plaintiff above named.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Eagle, Alaska, this twentieth day of September, 1904.

[Seal] ALBERT R. HEILIG,
Clerk U. S. District Court for the District of Alaska,
Third Division.

[Endorsed]: No. 1124. United States Circuit Court of Appeals for the Ninth Circuit. Robert H. Fleming, Appellant, vs. Reuben B. Daigle, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Third Division.

Filed October 8, 1904.

F. D. MONCKTON,
Clerk.

